

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Andrew Montgomery

Serial No.: 10/595,808

Filed: May 12, 2006

For: SACK

Group Art Unit: 3782

Examiner: Corey Nelson Skurdal

Attorney Docket No.: MOAE 0101 PUSA

**APPEAL BRIEF UNDER 37 C.F.R. § 41.37
AND PETITION FOR EXTENSION OF TIME
UNDER 37 C.F.R. § 1.136(a)**

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Commissioner for Patents
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Alexandria, VA 22313-1450

Sir:

Applicant hereby petitions for a one month extension of time to respond to the Office Action mailed August 16, 2011, (Notice of Appeal filed February 15, 2011) thereby extending the time period within which to respond to May 15, 2011.

This is an Appeal Brief from the final rejection of claims 1, 3-6, and 9 of the Office Action mailed on August 16, 2011 for the above-identified patent application.

I. REAL PARTY IN INTEREST

The Appellant has not assigned its rights, and is under no obligation to assign its rights. Therefore, the Applicant, Andrew Montgomery, is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no appeals, interferences or judicial proceedings known to the Appellant, the Appellant's legal representative, or the Assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1, 3-6, and 9 are pending in this application. Claims 1, 3-6, and 9 have been rejected and are the subject of this appeal. Claims 2 and 7-8 have been cancelled.

IV. STATUS OF AMENDMENTS

An amendment after final rejection has not been filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claims 1 and 6 are on appeal and relate to a sack and a backpack, respectfully, for compressing compressible material therein. Claims 1 and 6 are summarized, and embodiments of the claimed inventions are illustrated in Figures 3-5 below.

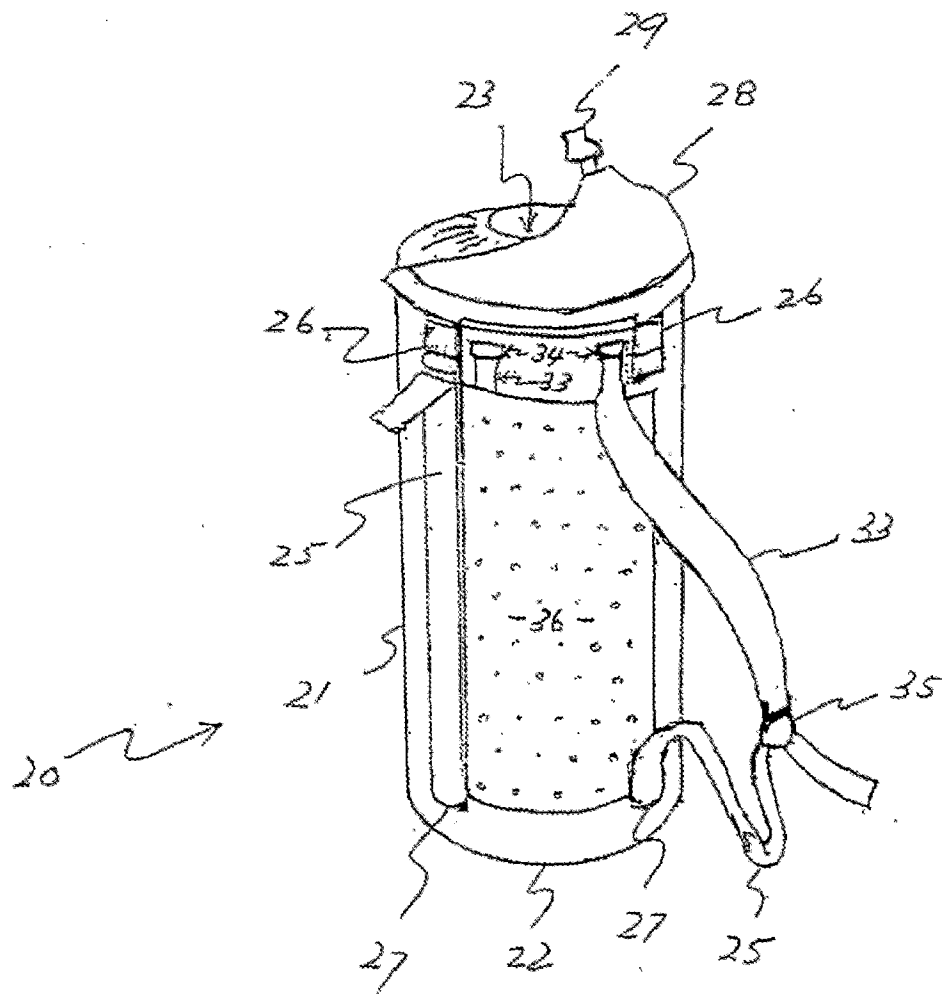


Figure 3

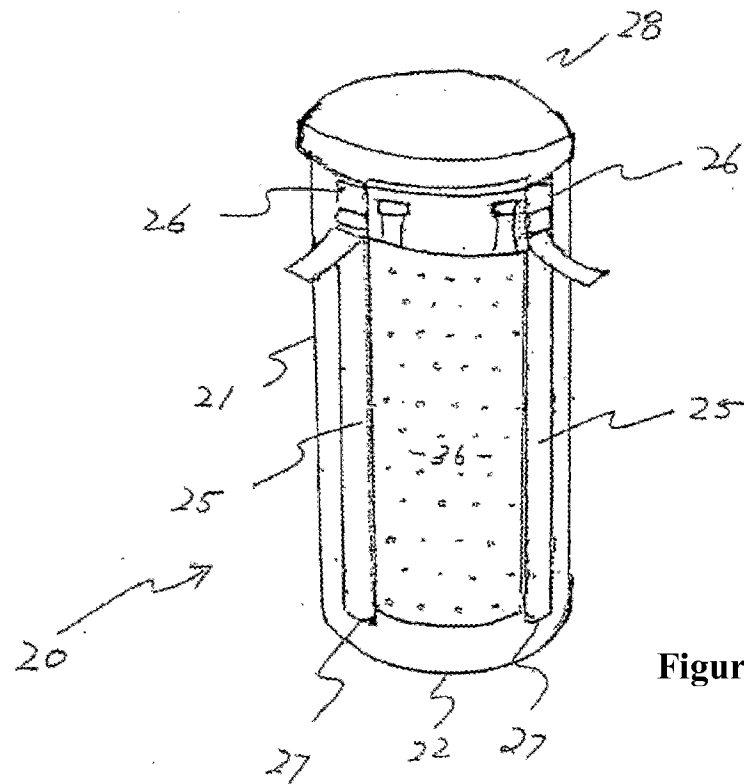


Figure 4

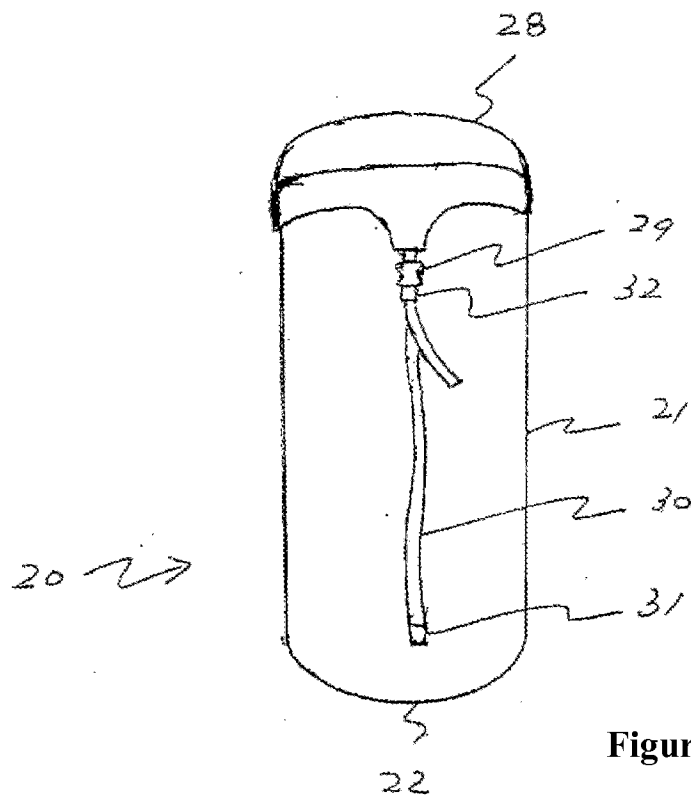


Figure 5

Regarding independent claim 1, a sack for compressing compressible material contained therein comprises a pliable, substantially cylindrical body portion 20 extending along a central axis for receiving the material. (Figures 3-5; specification at page 3, lines 11-12 (as amended on 5/26/2010) and page 5, lines 16-18). The body portion 20 has a lower base portion 22, a substantially cylindrical wall 21, and an upper opening 23 for introducing the material into the sack and removing it therefrom. (Figures 3-5; specification at page 5, lines 18-20). The sack has a cover 28 exterior to the body portion 20 and fixed thereto proximate the opening 23. (Figures 3 and 5; specification at page 5, lines 20-21). A cover fastener 29, 30, 32 aligned parallel to the central axis releasably fastens the cover 28 to the body portion 20 proximate the base 22, whereby the cover 28 covers the opening 23. (Figures 3 and 5; specification at page 5, lines 21-23 (as amended on 5/26/2010)). A plurality of compression straps 25 aligned parallel to the central axis are connected to the body portion 20 proximate the base 22 and releasably cooperate with a first set of connectors 26 located proximate the upper opening 23. (Figures 3 and 4; specification at page 4, lines 14-16; and page 5, lines 23-24 (as amended on 5/26/2010)). The cover fastener 29, 30, 32 and compression straps 25 are operable to compress material in the body portion along the central axis. (Figures 4 and 5; specification at page 5, lines 25-26 (as amended on 5/26/2010)). A pair of shoulder straps 33, separate from the compression straps 25, are connected to the wall 21 adjacent two of the first set of connectors 26 and terminate in a second set of connectors 35. (Figures 3 and 4; specification at page 4, lines 25-26). The second set of connectors 35 are cooperable with the compression straps 25 when the compression straps 25 are not cooperating with the first set of connectors 26. (Figure 3; specification at page 4, line 32 to page 5, line 1). A panel member 36 juxtaposing the wall 21 and attached thereto constitutes a sleeve on the sack. (Figure 4; specification at page 4, lines 26-28). The sleeve is configured to stow the shoulder straps between the wall 21 and the panel member 36 when the second set of connectors 35 are not cooperating with the compression straps 25. (Figure 4; specification at page 4, lines 26-29).

Regarding independent claim 6, a backpack comprises a pliable, substantially cylindrical, body portion 20 extending along a central axis. (Figures 3-5; specification at page 3, lines 11-12 (as amended on 5/26/2010) and page 5, lines 31-32). The body portion 20 has a lower base

portion 22, a wall 21 and an upper opening 23 for introducing material into the backpack and removing it therefrom. (Figures 3-5; specification at page 5, line 31 to page 6, line 1). The backpack has a cover 28 exterior to the body portion 20 and fixed thereto proximate the opening 23. (Figures 3-5; specification at page 6, lines 1-2). A cover fastener 29, 30 aligned parallel to the central axis releasably fastens the cover 28 to the body portion 20 proximate the base 22, whereby the cover 28 covers the opening 23. (Figures 3 and 5; specification at page 5, lines 21-23 (as amended on 5/26/2010); page 6, lines 2-4). The backpack has a pair of shoulder straps 33 fixed at one end to the body portion 20 proximate the opening 23 and terminating in a first set of connectors 35 at each free end. (Figures 3-4; specification at page 4, lines 25-26; page 6, lines 7-9). A plurality of compression straps 25 are aligned parallel to the central axis and are connected at one end to the body 20 proximate the base 22 and releasably cooperate with the shoulder straps 33 via the first set of connectors 35. (Figures 3-4; specification at page 4, lines 14-16; page 5, lines 23-24 (as amended on 5/26/2010); and page 6, lines 4-6). A panel member 36 juxtaposing the wall 21 and attached thereto constitutes a sleeve on the back of the sack, the sleeve is adapted to optionally stow the shoulder straps 33 between the wall 21 and the panel member 36 when the compression straps 25 are not cooperating with the first set of connectors 35. (Figure 4; specification at page 4, lines 26-29; page 6, lines 7-9) The backpack includes a second set of connectors 26 located proximate the upper opening 23 and cooperable with the compressions straps 25 when the compression straps 25 are not cooperating with the shoulder straps 33, the compression straps 25 and the second set of connectors 26 being operable with the cover fastener 29, 30 to compress material in the body portion 20 along the central axis. (Figures 3-5; specification at page 5, lines 25-26 (as amended on 5/26/2010); and page 6, lines 4-6 and 9-11).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 3-6, and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,024,265 in view of U.S. Patent No. 6,325,262.

VII. ARGUMENT

A. **Claims 1, 3-6, and 9 Are Patentable Under 35 U.S.C. § 103(a) Over U.S. Patent No. 6,024,265 in view of U.S. Patent No. 6,325,262**

The Examiner has rejected claims 1, 3-6, and 9 under 35 U.S.C. § 103(a) as being unpatentable over Clements (U.S. Patent No. 6,024,265) in view of Thompson (U.S. 6,325,262). The claimed sack overcomes various problems of prior art compression sacks, such as the one labeled as prior art in Figure 1 of the specification. Prior art compression sacks only serve a compressive function, suitable for activities such as camping and multi-day hiking where it is desirable to compress items like sleeping bags to significantly less volume. However, they are not also suitable for use as a daypack. The claimed features provide for a sack that can easily convert between an effective compression sack and a daypack, features not found in or suggested by the prior art cited.

Claim 1 is reproduced with emphasis below.

1. A sack for compressing compressible material contained therein, the sack including:

a pliable substantially cylindrical body portion extending along a central axis for receiving the material, the body portion having a lower base portion, a substantially cylindrical wall and an upper opening for introducing the material into the sack and removing it therefrom;

a cover exterior to the body portion and fixed thereto proximate the opening and having a cover fastener aligned parallel to the central axis for **releasably fastening to the body portion proximate the base** whereby the cover covers the opening,

a plurality of compression straps aligned parallel to the central axis and connected to the body portion proximate the base and **releasably cooperable with a first set of connectors located proximate the upper opening**, the cover fastener and compression straps being operable to **compress material in the body portion along the central axis**;

a pair of shoulder straps, separate from the compression straps, connected to the wall adjacent two of the first set of connectors and terminating in a second set of connectors, the **second set of connectors being cooperable with the compression straps when the compression straps are not cooperating with the first set of connectors**; and

a panel member juxtaposing the wall and attached thereto to constitute a sleeve on the sack, the **sleeve configured to stow the shoulder straps between the wall and the panel member when the second set of connectors are not**

cooperating with the compression straps.

To establish a *prima facie* obviousness rejection, all of the claimed features must be taught or suggested by the prior art. See *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Moreover, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007), quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). A proper obviousness determination requires that an Examiner make “a searching comparison of the claimed invention - including all its limitations - with the teaching of the prior art.” *In re Wada and Murphy*, Appeal 2007-3733 (Bd. Pat. App. & Int. 2008), citing *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis in original).

Clements teaches a rucksack that keeps the material inside pressed against the back of the rucksack while being worn. Compression straps 25 cooperate with buckles 26 to provide a diagonally upward force to move the rod/hoop 20 to a more upright position in order to compress material against the wearer’s back. (Clements, Col. 4, lines 1-4 and 29-41 and Fig. 6). The compression straps are therefore not compressing the body portion along its central axis, as required by claim 1. Clements’ teaching of the rod 20 as a frame member, and the possible inclusion of vertical metal staves 42 show that the rucksack is not compressed along the central axis, as both actively resist compression in that direction. (Clements, Col. 3, lines 41-44 and Col. 5, lines 5-7). The results of the diagonal straps 25 and rod 20 are seen in Figs. 6 and 7, where even when the straps are tightened the total rucksack height remains the same.

Furthermore, there is no cover fastener releasably fastening to the body portion proximate the base and operable to compress the body portion along its central axis. Examiner notes, in his Response to Arguments section, that the strap 28 is not relied on to teach the claimed limitations. (Final Office Action, mailed August 16, 2010). Examiner points instead to the unnumbered straps on either side of strap 28 to teach these limitations. However, those straps are also not attached to the body portion proximate the base, but are instead attached to the

rod sleeve 21. Accordingly, these straps assist in the diagonally upward motion of the rod 20 as discussed above, and do not axially compress the body portion.

Examiner essentially argues that the straps 25 of Clements could be detached from their connectors and used in conjunction with another set of connectors in order to meet the claim requirements that the compression straps being aligned parallel to the central axis. As seen in Figs. 1 and 2, the straps 25 are sewn into the sleeve 21 at a significant angle, making any sort of vertical alignment unreasonable and likely to cause tearing. The only connectors of Clements that would even allow this orientation are the connectors already being used for the unnumbered straps discussed above with respect to the cover fastener. If those connectors were instead used in conjunction with straps 25, then there would cease to be any sort of cover fastener, as required by claim 1. As noted by the Examiner in his Response to Arguments section, the claims recite that the compression straps and the cover fastener operate together to compress the material, not the compression straps alone. (Final Office Action, mailed August 16, 2010). Therefore, such a repositioning of the straps and connectors would not teach the claimed invention. Furthermore, disconnecting straps 25 from their connectors 26 would not be obvious because it would teach away from the invention of Clements, which is focused on pulling the rod 20 upward and inward towards the user's back. For similar reasons, Clements teaches away from disconnecting straps 25 in order to connect them to the shoulder straps 11. In addition, the positioning of the straps 25 would make the shoulder straps essentially unusable if coupled together.

Accordingly, Clements does not disclose a sack that is capable of converting back and forth between a compression sack and a daypack, but is rather just a daypack that compresses against the back of the user's body without any reduction in height. The Clements pack does not have the required straps and connectors in the required locations or orientations to be able to compress the sack along its central axis or to enable easy switching from compression pack to daypack by attaching the compression straps to the shoulder straps (or vice versa by stowing the shoulder straps behind a sleeve).

Independent claim 6 recites a backpack having similar features to the sack of claim 1, but phrased as a daypack that can convert to a compression sack. Accordingly, the arguments above are applicable to claim 6 and are incorporated herein. Claims 3-5 depend from claim 1 and claim 9 depends from claim 6, accordingly claims 3-5 and 9 are nonobvious for at least the reasons stated above regarding claims 1 and 6.

Conclusion

In view of the foregoing, Appellant respectfully asserts that the Application is in condition for allowance. Accordingly, Appellant respectfully requests a reversal of the Examiner's rejections.

The fee of \$270.00 as applicable under the provisions of 37 C.F.R. § 41.20(b)(2) as well as the Petition fee of \$65.00 are being charged to our Deposit Account No. 02-3978 via electronic authorization submitted concurrently herewith. Please charge any additional fee or credit any overpayment in connection with this filing to our Deposit Account No. 02-3978.

Respectfully submitted,

Andrew Montgomery

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Date: May 12, 2011

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Enclosure – Appendices

VIII. CLAIMS APPENDIX

1. A sack for compressing compressible material contained therein, the sack including:

a pliable substantially cylindrical body portion extending along a central axis for receiving the material, the body portion having a lower base portion, a substantially cylindrical wall and an upper opening for introducing the material into the sack and removing it therefrom;

a cover exterior to the body portion and fixed thereto proximate the opening and having a cover fastener aligned parallel to the central axis for releasably fastening to the body portion proximate the base whereby the cover covers the opening,

a plurality of compression straps aligned parallel to the central axis and connected to the body portion proximate the base and releasably cooperable with a first set of connectors located proximate the upper opening, the cover fastener and compression straps being operable to compress material in the body portion along the central axis;

a pair of shoulder straps, separate from the compression straps, connected to the wall adjacent two of the first set of connectors and terminating in a second set of connectors, the second set of connectors being cooperable with the compression straps when the compression straps are not cooperating with the first set of connectors; and

a panel member juxtaposing the wall and attached thereto to constitute a sleeve on the sack, the sleeve configured to stow the shoulder straps between the wall and the panel member when the second set of connectors are not cooperating with the compression straps.

3. A sack as claimed in claim 1, wherein the upper portion of the wall constitutes the opening and includes a drawstring for the opening.

4. A sack as claimed in claim 3, wherein the cover is cap-like and adapted to cover and extend below the opening when the cover fastener is fastened to the body portion.

5. A sack as claimed in claim 4, wherein the panel member is porous and pliable and constitutes a breathable barrier between the user's back and the sack, the sleeve being adapted to optionally stow a stiffening member or hydration bladder.

6. A backpack including:

a pliable substantially cylindrical body portion extending along a central axis and having a lower base portion, a wall and an upper opening for introducing material into the backpack and removing it therefrom;

a cover exterior to the body portion and fixed thereto proximate the opening and having a cover fastener aligned parallel to the central axis for releasably fastening to the body portion proximate the base whereby the cover covers the opening;

a pair of shoulder straps fixed at one end to the body portion proximate the opening and terminating in a first set of connectors at each free end;

a plurality of compression straps aligned parallel to the central axis and connected at one end to the body proximate the base and releasably cooperable with the shoulder straps via the first set of connectors

a panel member juxtaposing the wall and attached thereto to constitute a sleeve on the back of the sack, the sleeve adapted to optionally stow the shoulder straps between the wall and the panel member when the compression straps are not cooperating with the first set of connectors; and

a second set of connectors located proximate the upper opening and cooperable

with the compressions straps when the compression straps are not cooperating with the shoulder straps, the compressions straps and the second set of connectors being operable with the cover fastener to compress material in the body portion along the central axis.

9. A backpack as claimed in claim 6, wherein the panel member is porous and pliable and constitutes a breathable barrier between the user's back and the backpack, the sleeve being adapted to optionally stow a stiffening member or hydration bladder.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.